IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

In re: **FLOYD M. MARTIN, JR.** **Debtor.**	**Chapter 7** **Case No.: 14-74037-FJS**

CAROLYN L CAMARDO,
CHAPTER 7 TRUSTEE

Plaintiff,
v.

Adversary Proceeding No. __________

KAUFMAN & CANOLES, P.C.

Jeffrey M. Stedfast, Deed of Trust Trustee
Dennis T. Lewandowski, Deed of Trust Trustee
150 West Main Street, Suite 2100
Post Office Box 3037
Norfolk, Virginia 23514

Defendants.

COMPLAINT

Carolyn L. Camardo, in her capacity as Chapter 7 Trustee for the estate of the Debtor (the "**Trustee**"), by her undersigned counsel, and for her complaint (the "**Complaint**") against the above-captioned Defendants (each, a "**Defendant**" and together, the "**Defendants**") states as follows:

I. JURISDICTION AND VENUE

1. On November 5, 2014 (the "**Petition Date**"), the Debtor commenced this case by filing a voluntary petition for relief under chapter 11 of the Bankruptcy Code.

2. On February 5, 2016, this case was converted to a proceeding under chapter 7.

3. Following conversion of the case, the Trustee was appointed to serve as chapter 7 trustee in this case and continues to serve in that capacity.

4. This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157 and 1334.

5. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

II. PARTIES AND RELEVANT FACTUAL BACKGROUND

6. The Trustee is the chapter 7 trustee for the bankruptcy estate of *In re Floyd M. Martin, Jr.*, Case No. 14-74037.

7. Defendant Kaufman & Canoles, P.C. ("**Kaufman**") is a law firm and Virginia professional corporation.

8. Kaufman purports to have obtained an interest in certain real property owned by the Debtor and the Debtor's wife, Mrs. Anita F. Martin ("**Mrs. Martin**") as tenants by the entireties and located at 3885 Bruce Road, Chesapeake VA ("**Parcel C**").

9. Parcel C is more particularly described on a deed of trust dated December 1, 2012 and but not recorded in the Circuit Court for the City of Chesapeake until July 15, 2013 (the "**Kaufman Deed of Trust**"). A true and correct copy of the Kaufman Deed of Trust, which was prepared by Charles Land, an attorney and member of Kaufman, is attached hereto as Exhibit A.

10. The Kaufman Deed of Trust purports to provide Kaufman with a security

interest in Parcel C, up to a maximum amount of $200,000.00.

11. According to the Kaufman Deed of Trust, Parcel C was pledged to Jeffrey M. Stedfast and Dennis T. Lewandowski(the "**Kaufman Trustees**"), both of whom are attorneys and members of Kaufman, as collateral for the benefit of Kaufman to secure

> the repayment of any and all loans, liabilities, obligations, advances, re-advances, and extensions or renewals of credit, whether absolute, obligatory, or contingent, made from time to time, due and owing by the Grantor and/or any entity of which the Grantor (or either of them) own **more than 50%** of the ownership interests to Kaufman & Canoles, a professional corporation (collectively, the "Noteholder").

Kaufman Deed of Trust, p. 1 (emphasis added).

12. There is no 'Note' or other written obligation that is held by the party indicated as 'Noteholder' under the Kaufman Deed of Trust. Rather, the Deed of Trust was executed to secure obligations to Kaufman for legal fees.

13. On March 11, 2015, proof of claim number 16-1 (the "**Kaufman Claim**") was executed and filed by Michelle Bolton, who, at all relevant times, has been employed by Kaufman as its Records Supervisor. The Kaufman Claim asserts a right to payment in the secured amount of $200,000 and appends the Kaufman Deed of Trust as its basis.

14. Invoices for legal fees provided by Kaufman as underlying support for the Kaufman Deed of Trust and Kaufman Claim (the "**Invoices**") reveal inclusion of sums due for services provided for entities in which the Debtor's ownership is **50% or less**. Payment of these fees is not secured by the Kaufman Deed of Trust.

15. Invoices supporting the Kaufman Deed of Trust and Kaufman Claim include charges for sums not owed by the Debtor.

16. Invoices supporting the Kaufman Deed of Trust and Kaufman Claim include charges for sums not owed by Mrs. Martin.

17. Invoices supporting the Kaufman Deed of Trust and Kaufman Claim include charges for sums not owed by any entity owned by the Debtor in more than 50% share.

18. On the date of the granting of the Kaufman Deed of Trust, neither grantor nor any entity owned by either grantor in more than 50% share owed Kaufman $200,000.00 for legal fees.

19. On the date the Kaufman Deed of Trust was recorded, neither grantor nor any entity owned by either grantor in more than 50% share owed Kaufman $200,000.00 for legal fees.

20. As of the Petition Date, neither grantor nor any entity owned by either grantor in more than 50% share owed Kaufman $200,000.00 for legal fees.

21. The Kaufman Claim is not fully secured.

22. The amount of the Kaufman Claim is overstated.

23. In giving the Kaufman Deed of Trust, the Debtor intended to hinder, delay or defraud his creditors, including Southern Bank ("**Southern**").

24. The Debtor retained interests, including a possessory interest, in Parcel C after giving the Kaufman Deed of Trust. The Debtor gave the Kaufman Deed of Trust during a time when the Debtor was being pursued, or expected to be pursued, by creditors, including Southern. The Debtor gave the Kaufman Deed of Trust for inadequate consideration.

25. According to the schedules and statements filed herein on behalf of the Debtor, the value of Parcel C as of the Petition Date was $1,075,200.00.

26. Southern is the largest unsecured creditor of the Debtor.

27. Southern's unsecured claims against the Debtor constitute joint claims against the Debtor and Mrs. Martin, as Southern has obtained a federal court judgment liquidating its

claims against Mrs. Martin and has filed a proof of claim herein to which no objection has been made.

28. As of the Petition Date, Southern's joint claims against the Debtor and Mrs. Martin exceeded $2,297,587.

Count I
(Declaration of Lien, Claims, Encumbrances, and Interests)

29. The Trustee incorporates by reference, as if fully restated herein, the preceding allegations contained in all prior paragraphs of this Complaint.

30. The Court has the authority to determine the nature, extent, and validity of liens, claims, and encumbrances against assets of the Debtor, including Parcel C.

WHEREFORE, the Trustee respectfully requests entry of an order determining the nature, extent, and validity of the Kaufman Deed of Trust and the Kaufman Claim. The Trustee further requests that the Court grant the Trustee such other and further relief as is just and proper.

Count II
(Avoidance and Recovery of Fraudulent Transfers Pursuant to 11 U.S.C. §§ 548(a)(1)(B) and 550)

31. The Trustee incorporates by reference, as if fully restated herein, the preceding allegations contained in all prior paragraphs of this Complaint.

32. By executing the Kaufman Deed of Trust, the Debtor granted a security interest in Parcel C to the Kaufman Trustees, and thereby made a transfer (the "**Transfer**") of the Debtor's interest in property to the Kaufman Trustees, for the benefit of Kaufman.

33. In exchange for the Transfer, the Debtor received less than reasonably equivalent value.

34. At the time of the Transfer, the Debtor was insolvent or became insolvent as a result thereof.

35. At the time of the Transfer, the Debtor intended to incur, or believed that the Debtor would incur, debts that would be beyond the Debtor's ability to pay as such debts matured.

36. The Transfer constitutes an avoidable transfer pursuant to 11 U.S.C. § 548(a)(1)(B).

37. The Kaufman Trustees are the initial transferees of the Transfer, which Transfer was made for the benefit of Kaufman.

38. The Transfer is recoverable from the Kaufman Trustees and Kaufman pursuant to 11 U.S.C. § 550, to be preserved for the benefit of the estate under 11 U.S.C. § 551.

WHEREFORE, the Trustee requests that judgment be entered avoiding the Transfer as a fraudulent transfer pursuant to 11 U.S.C. § 548(a)(1)(B); preserving its value for the benefit of the estate pursuant to 11 U.S.C. 551; and granting judgment against Kaufman pursuant to 11 U.S.C. § 550, plus attorneys' fees and costs.

Count III
(Avoidance and Recovery of Fraudulent Transfers Pursuant to 11 U.S.C. § 544(b) and Va. Code § 55-81)

39. The Trustee incorporates by reference, as if fully restated herein, the preceding allegations contained in all prior paragraphs of this Complaint.

40. At all times relevant to the Transfer, there have been one or more creditors who have held and still hold matured or unmatured unsecured claims against the Debtor that were and are allowable claims.

41. The Transfer was made without any consideration and at a time when the Debtor was insolvent or rendered insolvent thereby.

42. The Kaufman Trustees are the initial transferees of the Transfer, which

Transfer was made for the benefit of Kaufman.

43. The Transfer is recoverable from the Kaufman Trustees and Kaufman pursuant to 11 U.S.C. § 550, to be preserved for the benefit of the estate under 11 U.S.C. § 551.

WHEREFORE, and pursuant to Virginia Code § 55-81 and §§ 544(b), 550(a) and 551 of the Bankruptcy Code, the Trustee requests that judgment be entered avoiding the Transfer, or the value thereof, for the benefit of the estate and granting judgment against Kaufman pursuant to 11 U.S.C. § 550, plus attorneys' fees and costs.

Count IV
(Avoidance and Recovery of Fraudulent Transfers Pursuant to 11 U.S.C. §§ 548(a)(1)(A) and 550)

44. The Trustee incorporates by reference, as if fully restated herein, the preceding allegations contained in all prior paragraphs of this Complaint.

45. The Transfer was a transfer of the Debtor's interest in property, made to the Kaufman Trustees, for the benefit of Kaufman.

46. The Transfer was made by the Debtor with actual intent of the Debtor to hinder, defraud, or delay his existing and/or subsequent creditors, including but not limited to, Southern.

47. The Transfer is avoidable pursuant to 11 U.S.C. § 548(a)(1)(A).

48. The Kaufman Trustees are the initial transferees of the Transfer, which Transfer was made for the benefit of Kaufman.

49. The Transfer is recoverable from the Kaufman Trustees and Kaufman pursuant to 11 U.S.C. § 550.

WHEREFORE, the Trustee requests that judgment be entered avoiding the Transfer as fraudulent transfers pursuant to 11 U.S.C. § 548(a)(1)(A); preserving its value for the benefit of the estate pursuant to 11 U.S.C. § 551; and granting judgment against Kaufman pursuant to 11 U.S.C. § 550, plus attorneys' fees and costs.

Count V
(Avoidance and Recovery of Fraudulent Transfers Pursuant to 11 U.S.C. § 544(b) and Va. Code § 55-80

50. The Trustee incorporates by reference, as if fully restated herein, the preceding allegations contained in all prior paragraphs of this Complaint.

51. At all times relevant to the Transfer, there have been one or more creditors who have held and still hold matured or unmatured unsecured claims against the Debtor that were and are allowable claims.

52. The Transfer was made by the Debtor with actual intent to hinder, delay, or defraud creditors of the Debtor.

53. The Kaufman Trustees are the initial transferees of the Transfer, which Transfer was made for the benefit of Kaufman.

54. The Transfers are recoverable from the Kaufman Trustees and Kaufman pursuant to 11 U.S.C. § 550.

WHEREFORE, and pursuant to Virginia Code § 55-80 and §§ 544(b), 550(a) and 551 of the Bankruptcy Code, the Trustee requests that judgment be entered avoiding the Transfer, or the value thereof, for the benefit of the estate and granting judgment against Kaufman pursuant to 11 U.S.C. § 550, plus attorneys' fees and costs.

Count VI
(Disallowance of Claim Pursuant to 11 U.S.C. § 502(d))

55. The Trustee incorporates by reference, as if fully restated herein, the preceding allegations contained in all prior paragraphs of this Complaint.

56. The Transfer referenced in the counts above is avoidable and recoverable as set forth therein pursuant to the applicable statutes alleged.

57. Kaufman has not paid the amount asserted or turned over the property sought to be avoided and recovered by the Trustee.

58. The Kaufman Claim should be disallowed, in whole or in part, pursuant to 11 U.S.C. § 502(d).

WHEREFORE, the Trustee requests that an Order be entered disallowing the Kaufman Claim, in whole or in part, pursuant to 11 U.S.C. § 502(d).

Count VII
(Determination and Disallowance of Claim Pursuant to 11 U.S.C. § 502)

59. The Trustee incorporates by reference, as if fully restated herein, the preceding allegations contained in all prior paragraphs of this Complaint.

60. Pursuant to 11 U.S.C. § 502, this Court is vested with authority to determine the amount and character of claims against the estate.

61. The Kaufman Claim should be disallowed to the extent it asserts an unsupported secured obligation pursuant to 11 U.S.C. § 502.

62. The Kaufman Claim should be disallowed the extent it asserts an unsupported unsecured obligation pursuant to 11 U.S.C. § 502.

63. To the extent the Kaufman Claim constitutes a contingent obligation, this Court should estimate that the amount of such obligation is $0, pursuant to 11 U.S.C. § 502(c).

WHEREFORE, the Trustee requests that an Order be entered disallowing the Kaufman Claim in whole or in part, or in the alternative, estimating the amount of the contingent Kaufman Claim, pursuant to 11 U.S.C. § 502.

CAROLYN L. CAMARDO,
CHAPTER 7 TRUSTEE

Respectfully submitted,

/s/ *Cullen D. Speckhart*
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